

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

EUGENE MCCALL,

Petitioner,

CASE NO. 2:08-cv-117

JUDGE FROST

MAGISTRATE JUDGE KEMP

v.

EDWIN VOORHIES, Warden,

Respondent.

OPINION AND ORDER

On February 2, 2008, the Magistrate Judge issued a *Report and Recommendation* recommending that petitioner's claims regarding his re-sentencing be dismissed and that the remainder of the instant petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254 be transferred to the United States Court of Appeals for the Sixth Circuit. Petitioner has filed objections to the Magistrate Judge's *Report and Recommendation*. For the reasons that follow, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. This action is hereby **DISMISSED**.

Petitioner objects to the Magistrate Judge's recommendation that his habeas corpus petition be transferred to the United States Court of Appeals for the Sixth Circuit as successive. He contends that all of his claims are properly raised in this successive habeas corpus petition because they relate to his March 20, 2006, re-sentencing, and therefore could not have been raised in his first federal habeas corpus petition, or because his claims raised issues under *State v. Colon*, 118 Ohio St.3d 26 (2008), decided

after his first habeas corpus petition had been dismissed.

Petitioner objections are not well taken. As discussed, the Magistrate Judge recommended that petitioner's claims regarding his re-sentencing be dismissed as procedurally defaulted. The record indicates that petitioner has failed to establish cause and prejudice for such procedural default. Additionally, for the reasons detailed in the Magistrate Judge's *Report and Recommendation*, this Court is without jurisdiction to consider the remainder of petitioner's claims, absent authorization for filing a successive petition from the United States Court of Appeals for the Sixth Circuit.

Pursuant to 28 U.S.C. §636(b), this Court has conducted a de novo review of the Magistrate Judge's Report and Recommendation. For the reasons detailed therein, petitioner's objections are **OVERRULED**. The *Report and Recommendation* is **ADOPTED** and **AFFIRMED**. Petitioner's claims regarding his re-sentencing are **DISMISSED**. The remainder of this action hereby is **TRANSFERRED** to the United States Court of Appeals for the Sixth Circuit as a successive petition.

IT IS SO ORDERED.

/s/ Gregory L. Frost
GREGORY L. FROST
United States District Judge